

**REMARKS**

Claims 1-7, 9 and 10 are all the claims pending in the present application, claims 8 and 11-15 being cancelled. In summary, the Examiner maintains some of the previous arguments and adds a new secondary reference, Abgrall (U.S. Patent No. 6,401,202), to support the rejections of the claims. The Examiner also adds arguments in the *Response to Arguments* section of the present Office Action.

Specifically, claims 1-3, 5-7, 9, 10, and 14-15 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Nelson et al. (U.S. Patent No. 5,568,641) in view of Abgrall. Claim 4 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Nelson and Abgrall, and further in view of Kurihara (JP 411328040A).

**§ 103(a) Rejections (Nelson/Abgrall) - Claims 1-3, 5-7, 9, 10, 14, and 15**

Claims 1-3, 5-7, 9, 10, 14, and 15 are rejected based on the reasons set forth on pages 3-7 of the Office Action.

In summary, the Examiner maintains the same rationale for applying primary reference Nelson to support the claim rejections as set forth in the previous Office Action, however the Examiner applies secondary reference Abgrall to allegedly satisfy the feature, “a conditional access system (CAS) for verifying whether the network device has authority to upgrade the software,” which was added to claim 1 and similarly added to independent claims 7 and 9 in the previous Amendment.

At the bottom of page 3 of the Office Action, the Examiner alleges that Nelson satisfies the above-quoted feature without providing support in Nelson for this assertion. In response, Applicant submits that Nelson does not satisfy this particular feature.

Further, Applicant submits that one of ordinary skill in the art would not have been motivated to combine the teachings of Nelson with those of Abgrall, as these two applied references are directed to two different inventions. On one hand, Nelson is directed to retention of a primary boot block firmware in an EEPROM during an upgrade so that if a powerfail occurs during the upgrade, the primary boot block information is still available in the EEPROM. Thus, the need for a separate ROM which would normally contain primary boot block information in the event of a powerfail, is eliminated. *See Abstract of Nelson.* On the other hand, Abgrall is directed to the performance of multitasking in a basic input and output system (BIOS) during a boot-up time so that useful and interesting information is displayed on a screen. *See, col. 2, lines 30-38 of Abgrall.* At least based on the reasons set forth above, Applicant submits that the objects and results of the two applied references are so diverse that one of ordinary skill in the art would not have been motivated to combine these two references.

Yet further, Applicant submits that the applied references do not teach or suggest each and every limitation of the claimed invention. For example, here, the applied references do not disclose or suggest, “a first memory for storing data necessary for operating the network device,” and a separate “a second memory for storing information transferred through the network,” as recited in claim 1. At the bottom of page 9 of the Office Action, the Examiner alleges that the “usage of ‘DECODE’ for chip select indicates using multiple memories.” In response, Applicant submits that even if, *arguendo*, Nelson indicates the use of multiple memories, the specific claimed features of the first memory and separate second memory are not disclosed or suggested.

With respect to dependent claims 2, 3, 5, and 6, Applicant submits that these claims are patentable at least by virtue of their dependencies from independent claim 1. Further, with respect to claim 2, Applicant maintains the previously submitted arguments.<sup>4</sup>

Applicant amends claims 7 and 9, as indicated herein, and submits that independent claims 7 and 9 are patentable at least based on reasons similar to those set forth above with respect to claim 1. Applicant submits that dependent claim 10 is patentable at least by virtue of its dependency from independent claim 9.

Further, with respect to claim 10, Applicant previously argued that Nelson does not disclose or suggest at least, “wherein the at least one failure is a failure in the network device which is checked during the erasing and storing steps,” as recited in claim 10. That is, Applicant previously argued that there is no mention in Nelson of a failure that is checked during the erasing and storing step. Applicant maintains this argument and further argues that Abgrall does not make up for the deficiencies of Abgrall.

In the present Office Action, the Examiner alleges:

Examiner does not see any specific description how this checking would be carried by Applicant's claimed invention. Examiner would then refer to one skill art would do some failure check in general, i.e., download failure per Nelson and one skill art would also recognize that download would indicate some erasing and storing.

In response, Applicant submits that even if, *arguendo*, a download would indicate some erasing and storing, there is no teaching or suggestion of the specific feature that at least one failure is a failure in the network device which is checked during the erasing and storing steps.

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<sup>4</sup> Applicant is still not sure what the Examiner's point is with respect to the statements at the top of page 10 of the Office Action. Nevertheless, Applicant believes that claim 2 is patentably distinguishable over the applied references.

Yet further, Applicant respectfully points out that this aspect of the invention is described at page 4, lines 14-15 of the originally filed specification, and submits that one of ordinary skill in the art would understand how to check for a failure during an erasing and storing operation.

At least based on the foregoing, Applicant submits that claims 1-3, 5-7, 9 and 10 are patentably distinguishable over the applied references Nelson and Abgrall, either alone or in combination.

§ 103(a) Rejections (Nelson/Abgrall/Kurihara) - Claim 4

Applicant submits that claim 4 is patentable at least by virtue of its dependency from independent claim 1. Kurihara does not make up for the deficiencies of Nelson and Abgrall.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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